IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4606 OF 2007

M/s.Sai Kripa Co-op. Hsg. Soc. Ltd. ..Petitioner.

V/s.

The Municipal Corpn. for Gr.Bombay & Anr. ..Respondents.

Mr.R.A.Thorat for petitioner.

Mr.A.J.Bhoir for respondents.

CORAM : J.P.DEVADHAR, J.

DATED : 12TH JULY, 2007.

P.C. :-

1. Heard learned counsel for the parties. Rule, returnable forthwith. By consent of the parties the petition is taken up for final hearing.

2. Against the order passed by the Enquiry Officer, under section 105B of the Bombay Municipal Corporation Act on 25th August, 2004, the petitioner had filed an appeal being Misc. Civil Appeal No.26 of 2005 before the Principle Judge, City Civil Court, Mumbai. The said appeal was dismissed for default on 12th January, 2007. The petitioner took out a Notice of Motion No.336 of 2007 for restoration of appeal and Notice of Motion No.3015 of 2007 for stay of issuance of warrant of possession. By the impugned order dated 5th June, 2007 the learned Principle Judge of the City Civil Court,

Bombay dismissed both the Notices of Motion on the ground that there is no provision to take out Notice of Motion in appeal proceedings arising out of eviction order passed under section 105-B of the Bombay Municipal Corporation Act.

3. It is well settled in law that the Court or Tribunal can set aside an ex-parte order with a view to do justice, even though the rules do not expressly provide to that effect. For example, in the case of **J.K. Synthetics Ltd. V/s. Commissioner of Central Excise** reported in **1996 (6) S.C.C. 92**, the Apex Court held that the Tribunal has power to restore an appeal dismissed for default even though the rules do not expressly provide for restoration of the appeal.

4. In this view of the matter, the impugned order dated 5th June, 2007 passed by the principal Judge, Bombay City Civil Court at Bombay is quashed and set aside and Misc.Appeal No.26/05 is restored to the file of the Principle Judge, City Civil Court, Bombay. Similarly, the Notice of Motion No.3015 of 2007 is also restored.

5. Accordingly, Rule is made absolute in terms of prayer clause (b) with no order as to costs.

(J.P. DEVADHAR, J.)